IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4907 OF 2005

Rustom Khodadad Irani ... Petitioner

V/s.

Zubedabai F. Sidhpurwala ... Respondent

Mr.A.Y. Sakhare with Mr.A.B. Shah for Petitioner
Mr.P.I. Vakil for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 2, 2005**

P.C.:

. The Petition is directed against the concurrent finding of facts recorded by the Courts below. Both the Courts have held that there is a ground made out under section 13(1)(k) of the Bombay Rent Act for ejectment. There is concurrent finding of facts that the tenant, the Petitioner herein, has migrated to United States of America alongwith his wife and children in the year 1989. The Petitioner claims that since his brother and his family are staying in the premises, they should be allowed to continue as they are part of his family. A submission is made that although the term 'family' has not been defined, in view of the definition of tenant under section 5(11)(c) the term 'family' should be construed broadly.

2. This submission of the Petitioner cannot be accepted. The Petitioner was a tenant of Room Nos.17 and 18 while his brother's family, sister and parents stayed in Room Nos.23 and 24. The Courts below have found that as a matter of fact the Petitioner's parents and sisters had been staying in some other premises, 3-4 years prior to the evidence being recorded. The Courts have also held, concurrently, that the suit premises had been acquired by the Petitioner after his marriage and that his brother DW1 was residing in Room Nos.23 and 24 and not the suit premises.

3. It is also submitted that the pleadings in the plaint were wanting and a sufficient cause for ejectment was not made out. Reliance is placed on the judgment in the case of *C.R. Shaikh v/s. L.D. Rohida & Anr.,* **1981 Mh.L.J. 429** to submit that the pleadings must include an averment that the premises were not used for the purpose for which they were let for a continuous period of six months.

3. In my view, the pleadings in the plaint are sufficient and the ground of section 13(1)(K) has been pleaded in no uncertain terms.

4. There is no need to interfere with the concurrent findings of fact recorded by the Courts below. Hence, petition is rejected.

5. It is submitted on behalf of the Petitioner that some of his belongings are lying in the suit premises. The learned Advocate for the Respondent states that the Petitioner can remove his belongings from the suit premises within three weeks from today, after giving requisite intimation to the advocate for the Respondent as well as the Respondent.

6. In view of the disposal of the Writ Petition, Civil Application No.1954 of 2005 does not survive and the same is disposed off accordingly.